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In The

# Supreme Court of the United States

October Term, 1975

No. 75-691

PLEASANT C. SHIELDS, MORRIS L. RIDLEY, W. K. CUNNINGHAM, MARGARET DAVIS, N. W. PERDUE, SUED INDIVIDUALLY AND IN THEIR REPRESENTATIVE CAPACITY,

*Petitioners,*

v.

LYNELL FRANKLIN, CHARLES JONES, LAWRENCE WILSON AND CHARLES R. VETTE,

*Respondents.*

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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## PRELIMINARY STATEMENT

Pleasant C. Shields, Morris L. Ridley, W. K. Cunningham, Margaret Davis, N. W. Perdue, sued individually and in their respective capacity, Petitioners, pray that a Writ of Certiorari be issued before judgment in the United States Court of Appeals for the Fourth Circuit.

On August 5, 1975, the United States District Court for the Western District of Virginia, Charlottesville Division,

held the Due Process Clause of the Fourteenth Amendment to be applicable to parole procedures and, more specifically, held that the Clause requires (1) that a parole board publish standards and criteria governing parole determinations, (2) that inmates be given a statement of reasons for denial of parole, (3) that inmates be afforded access to information upon which a parole board relies in reaching its decision to grant or deny parole, and (4) that a parole board grant hearings to inmates prior to making a parole decision.

The Court held that it was not constitutionally required that counsel be appointed for inmates and that there was no constitutional right of inmates to call witnesses in support of a favorable parole decision or to call and cross-examine persons who provided information to the Virginia Parole Board which might adversely affect the granting of parole.

The Court ordered that the Petitioners, constituting the Virginia Parole Board, establish procedures for affording inmates eligible for parole an opportunity prior to their parole hearing to review the information to be considered by the Board in reaching a parole decision, granting the right to Petitioners to limit access by inmates to information which would reveal confidential sources or information which State officials reasonably considered as posing a danger to the eligible inmates or others. Pursuant to 28 U.S.C. § 2201 and *Rule* 57, *Federal Rules of Civil Procedure*, the Court adjudged that the Fourteenth Amendment required that standards and criteria governing parole decisions be maintained and be made reasonably available to members of the Respondent class and that such class be given a personal hearing before members of the Board prior to a parole determination. Subsequent to the decision of Court, both Petitioners and Respondents filed Notices of Appeal, and the case is now before the United States

Court of Appeals for the Fourth Circuit as of the date of this Petition. No briefing schedule has been set by the Court.

Respondents prior hereto filed a Petition for a Writ of Certiorari before judgment in the United States Court of Appeals for the Fourth Circuit with this Court which is now pending. Respondents therein (Petitioners herein) have previously hereto waived their right to file a Brief in Opposition and joined in the prayer of Petitioners in that case that a Petition for a Writ of Certiorari be granted. Petitioners in this case are authorized to state that Respondents herein join in Petitioners' prayer for a Writ of Certiorari. Both Petitioners and Respondents pray that this case be consolidated with *Weinstein* v. *Bradford,* No. 74-1287, upon which Petition for a Writ of Certiorari has already been granted.

Petitioners believe that this case is of imperative public importance so as to justify the deviation from normal appellate processes and so as to require immediate settlement in this Court. This Court has pending before it *Weinstein* v. *Bradford* in which the issue is whether the Due Process Clause of the Fourteenth Amendment is applicable to parole procedures. In *Weinstein, supra,* this Court has no record upon which to hold how, assuming the Due Process Clause to be applicable, specifically it applies to parole procedures. In the case at bar, testimony was taken relative to those issues. It is felt that in view of this Court's possible holding that the Clause is applicable, the specifics of such applicability ought to be ruled upon at the same time and that this case provides a means by which to accomplish that end. At issue is whether parole procedures in the 50 States is in compliance with the Constitution of the United States.

## OPINION BELOW

The Memorandum Opinion and Order of the United States District Court for the Western District of Virginia, Charlottesville Division, filed August 5, 1975 is included herein in the Appendix. (App. 1- )

## JURISDICTION

The jurisdiction of this Court to issue a Writ of Certiorari in this case is grounded upon 28 U.S.C. § 1254 (1), 28 U.S.C. § 2101 (e), and Rule 20, *Rules of the Supreme Court of the United States,* as follows:

§ 1254(1)—Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

§ 2101(e)—An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

Rule 20—A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court.

## QUESTIONS PRESENTED

I. Is the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States applicable to parole proceedings?

II. Even if applicable, does the Due Process Clause require that a parole board publish standards and criteria governing parole determinations and require that inmates be given a statement of reasons for parole denial?

III. Even if applicable, does the Due Process Clause require that inmates be afforded access to information upon which a parole board relies in reaching a decision to grant or deny parole?

IV. Even if applicable, does the Due Process Clause require that a parole board grant hearings to inmates prior to making a parole decision?

## RELEVANT CONSTITUTIONAL PROVISIONS

### Fourteenth Amendment To The Constitution Of The United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

Respondents filed a class action Title 42 § 1983 action against Petitioners, who are the Chairman and four members of the Virginia Probation and Parole Board, now known as the Virginia Parole Board. Petitioners alleged that the due process of law clause of the Fourteenth Amendment to the United States Constitution was applicable to

parole procedures and further asserted that specifically they, and all others similarly situated, were entitled to (1) a parole hearing, (2) the right to counsel, (3) the right to inspect the file containing information considered by the Board in granting or denying parole, (4) the right to subpoena witnesses on their behalf or to subpoena adverse witnesses and subject them to cross-examination, (5) written criteria relating to the granting or denying of parole, and (6) reasons for denial of parole. Respondents contended that they had not been denied these rights and sought both injunctive relief and monetary damages.

The matter was heard before the United States District Court, Western District, Charlottesville Division. Evidence presented was that in the fiscal year 1973-74 the Virginia Probation and Parole Board considered 3,792 inmates for parole (In the same fiscal year, 1,542 individuals were granted parole). Evidence was presented to show that there are 40 institutions in which inmates are incarcerated in the Commonwealth of Virginia and that the Petitioners interviewed inmates at 19 locations. There are five members of the Virginia Probation and Parole Board. There was testimony to the effect that the Board sees anyone who may be favorable toward a particular inmate's parole at its office in the City of Richmond and that the Board will also discuss parole with retained counsel for an inmate at its office in Richmond.

There was testimony to the effect that the Board on January 6, 1975, adopted criteria for the granting or denying of parole and had taken action so that the same would be posted at each institution and distributed to incoming inmates. There was further testimony to the effect that the Board had long before institution of the suit given reasons for denial of parole. Each member of the Board testified that

they had no intention of withdrawing the criteria or of terminating the giving of reasons for denial of parole.

Members of the Board pointed out the administrative difficulties and costs in instituting procedures whereby counsel were appointed for inmates, whereby inmates were given the right to subpoena witnesses on their behalf or subpoena witnesses who contributed adverse information to the inmates' files, and in granting access to inmates to the files used by the Board in reaching a parole decision.

The four named Respondents attempted to show errors in the files considered by the Board in reaching parole decisions. In some cases, the alleged errors were not errors but rather matters of opinion, and in other cases were errors elsewhere were corrected in the file or errors which were of no particular moment with respect to the issue of the granting or denial of parole.

It was the feeling of members of the Board that counsel would be destructive to parole proceedings and that interviewing of individuals favorable toward an inmate's parole normally was of relative little benefit to both the inmate and the Board.

## ARGUMENT

### I.

**The Due Process Clause Of The Fourteenth Amendment To The Constitution Of The United States Is Not Applicable To Parole Proceedings.**

Prior to the decision in *Bradford* v. *Weinstein*, ..... F.2d ....., 4th Cir. 1974), now pending on a Writ of Certiorari before this Court, it had been held in several Circuits that the due process clause of the Fourteenth Amendment was not applicable to parole procedures. *Menechino* v. *Oswald*, 430 F.2d 403 (2nd Cir. 1970), cert. den., 400 U.S. 1023

(1971); *Walker* v. *Oswald*, 449 F.2d 481 (2nd Cir. 1971); *Scarpa* v. *United States Board of Parole*, 477 F.2d 278 (5th Cir. 1973), vacated on other grounds, 414 U.S. 809 (1973); *Buchanan* v. *Clark*, 446 F.2d 1379 (5th Cir. 1971); *Baines* v. *U.S.*, 445 F.2d 260 (8th Cir. 1971); *Schawartzburg* v. *Board of Parole*, 399 F.2d 297 (10th Cir. 1968). *Hyser* v. *Reed*, 318 F.2d 225 (D.C. Cir. 1963), cert. den. sub. nom. *Thompson* v. *United States Board of Parole*, 375 U.S. 957 (1963).

*Morrissey* v. *Brewer*, 408 U.S. 471 (1972), *Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973), and *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), in which it was held that the due process clause was applicable to procedures involving revocation of parole, revocation of probation, and prison disciplinary proceedings, respectively, do not lend support to the view that the due process clause is applicable to parole procedures.

These decisions all related to a State's power to adversely change the existing status of an individual and were concerned with the forfeiture of a present status and the deprivation of an existing liberty.

An inmate has no constitutional right to parole. Parole arises only pursuant to enabling legislation. The due process clause of the Fourteenth Amendment does not require a hearing in every conceivable case of govermental impairment of a private interest. *Cafeteria Workers* v. *McElroy*, 367 U.S. 886 (1961).

The issue in this case, not over-simplified in the view of Petitioners, is whether there is a Constitutional requirement that parole procedures now be transformed into adversary proceedings. For if there is application of due process of law requirements to parole procedures, that will be the result.

The nature of parole proceedings as they presently exist, is well summed up by Judge (now Chief Justice) Burger in *Hyser, supra,* in 318 F.2d at p. 237:

> "The Bureau of Prisons and the Parole Board operate on the basic premise that prisoners placed in their custody are to be rehabilitated and returned to useful lives as soon as in the Board's judgment that transition can be safely made. This is plainly what Congress intends. Thus, there is a genuine identity of interest if not purpose in the prisoner's desire to be released and the Board's policy to grant release as soon as possible. Here there is not the attitude of adverse, conflicting objectives as between the parolee and the Board inherent between prosecution and defense in a criminal case. Here we do not have pursuer and quarry but a relationship partaking of parens patriae. . . .
>
> * * *
>
> "Fundamentally the Parole Board's interest and its objectives are to release a prisoner as soon as he is a good parole risk and to allow him to remain at liberty under . . . supervision as long as he is a good risk . . ."

Parole procedures are not presently adversary in nature. There are no plaintiffs; there are no defendants. The procedures are not a matter of contest. There is no presumption against an inmate, and an inmate faces no opponent in the procedures. There are no "accusations"; there are no "accused."

Assuming that the due process clause of the Fourteenth Amendment were applicable to parole procedures and that ordinary due process requirements were thus applicable, such as appointment of counsel to represent indigent inmates, compulsory attendance of witnesses on behalf of inmates, compulsory attendance of witnesses adverse to an

inmate, disclosure to an inmate prior to hearing of material to be relied on by a parole board, it is submitted that such procedures would tend to bankrupt and disrupt the parole system and its goals. On the other hand, if none of these requirements were applicable even though it was held that the due process clause was applicable, a decision holding the clause to be applicable would be somewhat meaningless. Thus, it is considered appropriate by the Petitioners to consider normal requirements of the clause in an attempt to determine whether the clause itself is applicable, even though this might appear to constitute a "back-door" approach.

As this Court in *Wolff, supra, Morrissey, supra, Gagnon, supra,* and *Hannah* v. *Larche,* 363 U.S. 420 (1960), did not refuse to recognize institutional safety or correctional goals in applying due process standards, it is submitted that there can be no refusal to recognize practical administrative realities as well as the nature and goals of parole as reflected in present procedures, before holding the due process clause to be applicable at all.

Requirements of locating competent counsel appointing them to represent inmates, the determination of and subpoenaing of witnesses adverse to the inmate, subpoenaing of witnesses on behalf of inmates, providing a mechanism by which inmates could review files in advance of the hearing, providing for the security of such files, actual hearing of in witnesses, cross-examination of witnesses, and arguments of counsel would totally change the present system and make near impossible the reaching of its present goals.

If the due process clause were made applicable to such procedures, and for example, counsel were required to be appointed for inmates, the result might necessarily be that the State would be forced to take a "side" against the

inmate and use its legal talent, all evidence that could muster, any reasonable argument it could make, in order to defeat the granting of parole if, for no other reason, than to make each side "equal" in the proceedings. Such a result would be catastrophic to the system and would be opposed to the very nature and theory of parole.

In *Gagnon, supra,* this Court in addressing itself to the right of counsel at probation revocation hearings stated as follows:

> "The introduction of counsel into a revocation proceeding will alter significantly the nature of the proceeding. If counsel is provided for the probationer or parolee, the State in turn will normally provide its own counsel; lawyers, by training and disposition, are advocates and bound by professional duty to present all available evidence and arguments in support of their clients' positions and to contest with vigor all adverse evidence and views. The role of the hearing body itself, aptly described in Morrissey as being 'predictive and discretionary' as well as factfinding, may become more akin to that of a judge of a trial, and less attuned to the rehabilitative needs of the individual probationer or parolee. In the greater self-consciousness of its quasi-judicial role, the hearing body may be less tolerant of marginal deviant behavior and feel more pressure to reincarcerate rather than to continue nonpunitive rehabilitation. Certainly, the decisionmaking process will be prolonged, and the financial cost to the State—for appointed counsel, counsel for the State, a longer record and the possibility of judicial review—will not be insubstantial." (footnote omitted.) 411 U.S. at pp. 787-788.

Applicability of the due process clause may not be considered in a vacuum. It must be considered as it relates to the nature and goals of parole and to the practical application of those goals.

In *Morrissey* v. *Brewer, supra,* this Court stated in 408 U.S. at p. 480 as follows:

> "We begin with the proposition that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a Defendant in such a proceeding does not apply to parole revocations."

In *Wolff, supra,* this Court repeated the statement as applicable to prison disciplinary proceedings.

In *Wolff, supra,* the Court stated in 418 U.S. at p. 561:

> "In striking the balance that the Due Process Clause demands, however, we think the major consideration militating against adopting the full range of procedures suggested by Morrissey for alleged parole violators in the very different stake the State has in the structure and content of the prison disciplinary hearing."

This Court then reviewed realities surrounding the components of a penal system.

In *Wolff, supra,* this Court in 418 U.S. at p. 572, after holding specifically how due process applied to prison disciplinary proceedings, stated as follows:

> "It is our view, however, that the procedures we have now required in prison disciplinary proceedings represent a reasonable accommodation between the interests of the inmate and the needs of the institution."

In *Goss* v. *Lopez,* 419 U.S. 565 (1975), this Court held that the due process clause of the Fourteenth Amendment required hearings prior to suspension of students from school.

This Court stated in 419 U.S. at p. 579 as follows:

> "It also appears from our cases that the timing and content of the notice and the nature of the hearing will

depend on appropriate accommodation of the competing interests involved. *Cafeteria Workers* v. *McElroy, supra,* at 895; *Morrissey* v. *Brewer, supra,* at 481."

This Court also stated at 419 U.S. at p. 583 as follows:

". . . . Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cause more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroys its effectiveness as part of the teaching process."

In *Wiley* v. *United States Board of Parole, et al.,* 380 F.Supp. 1194 (M.D. Pa. 1974), the Court stated as follows:

". . . . It is apparent that due process does not require that the full panoply of rights due a parolee in a parole revocation proceeding be imposed on parole decision-making. Unlike a parolee facing reimprisonment who stands to lose a presently enjoyed interest in his conditional freedom, the prisoner being considered for parole release has a mere anticipation or hope of freedom. More important is the fact that the nature of parole decision-making is vastly different from that of parole revocation. Unlike a parole release decision, a necessary precondition to a parolee's reincarceration is a finding that he has violated a condition of his parole. The parolee's loss of his conditional freedom turns in large part on a retrospective determination of a specific factual question. In contrast, the parole release decision, as emphasized above, is a prognostic determination with respect to one's suitability for parole and is based on a complex of tangible and intangible factors and involves the discretionary application of knowledge de-

> rived from such fields as psychology, criminology, sociology and penology. While the parole revocation procedure basically is concerned with making a factual determination with respect to parole violation, parole decisionmaking centers on making a diagnostic and predictive determination with respect to whether the rehabilitation of the prisoner and the welfare of society generally would be best served by granting the inmate's conditional freedom rather than by his physical confinement." (380 F.Supp. at p. 1200).

It has been rather consistently held that various due process requirements are not applicable to parole procedures. *Menechino, supra; Ott* v. *Ciccone,* 326 F.Supp. 609 (W.D. Mo. 1970); *Buchanan, supra, Schawartzburg, supra; Ganz* v. *Bensinger,* 480 F.2d 88 (7th Cir. 1973), right to counsel.

Prior disclosure to an inmate of information used by a parole board has also been held not to be required by the due process clause. *Menechino, supra; Barradale* v. *United States Board of Paroles and Pardons,* 362 F.Supp. 338 (M.D. Pa. 1973); *Ott, supra; Wiley, supra; Goble* v. *Bounds,* 281 N.C. 307, 188 S.E.2d 347 (1972).

The right to have witnesses present as well as the right to cross-examine "adverse" witnesses has also been rejected. *Barradale, supra; Tarlton* v. *Clark,* 441 F.2d 384 (5th Cir. 1971); *Menechino, supra; Wiley, supra.*

It has also been held that there is no constitutional requirement that a parole board give reasons for denying parole. *Battle* v. *Norton,* 365 F.Supp. 925 (D. Conn. 1973); *Menechino, supra; Barradale, supra.*

It is submitted that any application of due process of law requirements similar to those required by this Court in *Morrissey, Gagnon,* or *Wolff* to parole procedures would have no other effect other than making those procedures adversary in nature. The nature of the parole system is such

that a requirement that it be adversary would destroy its nature and goals.

Petitioners have quoted extensively in this Petition language of this Court respecting the application of the due process clause to procedures other than parole procedures. The purpose is to demonstrate that this Court has taken into account, by necessity, the nature of those procedures as well as the effect of applying to these procedures due process requirements. It is submitted that this Court's careful and limited holdings that due process of law requirements are applicable to various procedures fortifies the contention of Petitioners that such requirements are not applicable to parole procedures and that thus the due process clause itself is not applicable.

The District Court in *Bradford, supra,* stated very well the difficulty in applying due process of law to parole hearings. It stated:

> ". . . The administrative burden of the parole system would be enormously increased if each inmate were given a plenary hearing on his suitability for parole. Further burdens would ensue with requirements of notice, procedures for the appointment of counsel and reporters, subpoenaing and cross-examination of witnesses, compensation of counsel and cost of transcripts, and the preparation of findings and conclusions by the Board. Such requirements would likely result in congested dockets before the Board of Paroles and result in undue delay in reviewing the individual cases of 10,000 prisoners in the system as each becomes eligible for parole consideration. The state is not constitutionally required to provide for the parole of prisoners, and if the Plaintiff's demands were enforced and the burden of the prison system became too great, the state might find it necessary or desirable to terminate the parole system."

## II.

**Even If Applicable, The Due Process Clause Does Not Require That A Parole Board Publish Standards And Criteria Governing Parole Determinations And Does Not Require That Inmates Be Given A Statement Of Reasons For Parole Denial.**

On January 6, 1975, Petitioners adopted criteria relating to the granting or denying of parole. Subsequently, Petitioners caused written criteria to be distributed individually to inmates entering the penal system. Petitioners further caused the written criteria to be posted in each institution so that inmates already incarcerated would have access to the same.

Petitioners, however, contend that there is no constitutional requirement of such criteria, although they have no intention of withdrawing the same.

Petitioners presently give reasons for denying parole and have done so for some period of time. Petitioners, however, contend that there is a constitutional requirement that they give reasons for denying parole. It has been so held. *Battle* v. *Norton,* 365 F.Supp. 925 (D. Conn. 1973); *Menechino, supra; Barradale, supra.*

## III.

**Even If Applicable, The Due Process Clause Does Not Require That Inmates Be Afforded Access To Information Upon Which A Parole Board Relies In Reaching A Decision To Grant Or Deny Parole.**

The files to which Respondents sought access can be characterized as containing but not necessarily limited to pre-sentence reports, psychiatric and medical reports, and material relating to vocational education and training, relations with prison staff and other inmates, and resources available upon release. Such files also may contain dis-

ciplinary reports, letters from the general public, an inmate's parents, relatives, employers, commonwealth's attorneys, law-enforcement officers, or judges. Work release progress reports as well as furlough reports are sometimes contained in the files. In addition, letters written by inmates to the Board are filed. If an inmate has previously been released upon parole and thereafter revoked, supervision histories written by parole officers are contained in the files. Pre-parole summaries are sometimes contained in such files.

Inmates eligible for parole are presently interviewed in 19 locations in Virginia. Petitioners' offices are located in Richmond, and Petitioners customarily review the files prior to interviews in order to prepare for hearings. Prior release of the files to inmates in the 40 institutions or even in the 19 institutions where interviews take place would cause complete administrative disruption. In each year, approximately four thousand files would have to be reviewed by inmates. Careful review of such file might well take in excess of three hours. There would be no practical administrative way to provide security for the files while inmates were reviewing them. Both prison discipline and procedures would be completely disrupted, and the alternative of bringing inmates to a central location in the State would probably cause even more disruption and would be a physical impossibility. Candid reports, opinions, and impressions relating to inmates would become much more difficult to obtain if those submitting the same knew that they would be seen by an inmate, subjecting such persons to possible reprisal and perhaps thereby requiring their attendance at a hearing in order to support their statements as well as facing cross-examination.

It has been held that an inmate has no right to review such files. *Menechino, supra; Barradale* v. *United States*

*Board of Paroles and Pardons,* 362 F.Supp. 338 (M.D. Pa., 1973); *Ott* v. *Ciccone,* 326 F.Supp. 609 (W.D. Mo. 1970); *Wiley, supra; Goble* v. *Bounds,* 281 N.C. 307, 188 S.E.2d 347 (1972); *contra, Cooley* v. *Sigler,* 381 F.Supp. 441 (D. Minn. 1974), and *Childs* v. *United States Board of Parole,* 511 F.2d 1270 (D.C. Cir. 1975).

Petitioners believe that confidentiality of the files can be supported on the same basis as it has been supported in cases relating to pre-sentence reports. It has been held that non-disclosure of such reports to a defendant violates no constitutional requirement. *Williams* v. *New York,* 337 U.S. 241 (1949), *reh. den.* 337 U.S. 961 *reh. den.* 338 U.S. 841; *Churder* v. *United States,* 294 F.Supp. 207 (D.C. Mo. 1968), aff'd 417 F.2d 633 (8th Cir. 1969); *Waddell* v. *State,* 24 Wis.2d 364, 129 N.W.2d 201 (1964). *Williams* v. *Oklahoma,* 358 U.S. 576 (1959), *reh. den.* 359 U.S. 956; Annotation, 48 A.L.R.3d § 3[a], pp. 691-699.

Petitioners submit that examination by inmates of files containing information used by the Defendants in granting or denying parole would place an undue, if not impossible, administrative burden upon the parole system. Moreover, if such information were made available to inmates, those contributing the information in some cases would be subject to retaliation or reprisal. In addition, if such information were available to inmates, those giving the information would be more likely to contribute either less or less candid information. Confidentiality of such files has heretofore been upheld. It is an essential element of the parole system.

## IV.

**Even If Applicable, The Due Process Clause Does Not Require That A Parole Board Grant Hearings To Inmates Prior To Making A Parole Decision.**

Petitioners presently conduct hearings in connection with the granting or denying of parole.

There is no constitutional requirement that Petitioners conduct parole hearings. *French* v. *Ciccone,* 308 F.Supp. 256 (W.D. Mo. 1969); *Menechino, supra.*

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari should be granted before judgment in the United States Court of Appeals for the Fourth Circuit, consolidated with *Weinstein* v. *Bradford,* No. 74-1287, now pending, in this Court, and the judgment of the United States District Court, Western District, Charlottesville Division, reversed.

Respectfully submitted,

ANDREW P. MILLER
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LINWOOD T. WELLS, JR.
*Assistant Attorney General*

Supreme Court–State Library Building
Richmond, Virginia 23219

**CERTIFICATE OF SERVICE**

I, Linwood T. Wells, Jr., Assistant Attorney General of Virginia, counsel for Petitioners in the captioned matter and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 29th day of October, 1975, I mailed a copy of the foregoing Petition for a Writ of Certiorari before judgment in the United States Court of Appeals for the Fourth Circuit by first class mail to Stephen A. Saltzburg, Esq., Visiting Professor, Counsel for Respondents, University of California, School of Law, Boalt Hall, Berkeley, California 94720.

LINWOOD T. WELLS, JR.
*Assistant Attorney General*

# APPENDIX.

CIVIL ACTION No.
74-C-214-R(C)
74-C-215-R(C)
74-C-230-R(C)
74-C-109-H(C)

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LYNELL FRANKLIN, CHARLES JONES,
LAWRENCE WILSON, AND
CHARLES R. VETTE,
*Plaintiffs,*

v.

PLEASANT C. SHIELDS, MORRIS L. RIDLEY,
W. K. CUNNINGHAM, MARGARET DAVIS,
N. W. PERDUE, SUED INDIVIDUALLY AND IN
THEIR REPRESENTATIVE CAPACITY,
*Defendants.*

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**OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, CHARLOTTESVILLE DIVISION**

**Filed August 5, 1975**

In the consolidated cases of *Bradford* v. *Weinstein*, No. 73-1751 (4th Cir., No. 22, 1974)[1] and *Jenkins* v. *Tyler*, No. 73-1921 (4th Cir. Nov. 22, 1974) the Court of Appeals for the Fourth Circuit held that the due process clause of the Fourteenth Amendment applies to parole eligibility hearings and remanded the cases to the district courts for determination of "how much process is 'due.' " At the time of these decisions or shortly thereafter this court received *pro se* complaints from the four named plaintiffs herein,

[1] Certiorari granted 43 U.S.L.W. 3633 (June 3, 1975).

each of whom is a Virginia prisoner who was eligible for parole and had been denied parole at least once. Since each of the plaintiffs challenged the procedures by which they had been denied parole, the four cases were consolidated, counsel was appointed and leave to file an amended complaint was granted. By amended complaint plaintiffs sued the five current members of the Virginia Probation and Parole Board (hereinafter "the Board") in their individual and representative capacities seeking both monetary damages and injunctive relief.

With respect to their claim for injunctive relief plaintiffs have asked that the suit be treated as a class action pursuant to Rule 23(a) and (b) (2) of the Federal Rules of Civil Procedure. They seek certification of a class consisting of all prisoners and potential prisoners in Virginia who are now, or who hereafter may become eligible for parole. The defendants have agreed that a class action is appropriate with respect to the claim for injunctive relief. Because this court finds that the requirements of Rule 23(a) and (b) (2) have been met with respect to the proposed class, certification of the class is accordingly granted.

Plaintiffs submit that as a matter of constitutionally required due process of law, prisoners are entitled to the following procedural protections with respect to parole determinations:

> (1) written notice or access to written notice of the standards and criteria used by the Board in determining whether parole will be granted;
>
> (2) a hearing and personal appearance before the Board regarding the parole decision in their cases;
>
> (3) an opportunity to inspect their prison files which are utilized by the Board in determining whether parole will be granted;

(4) an opportunity at the parole hearing to call witnesses and present evidence in support of a favorable parole decision, and an opportunity to cross-examine persons who have provided information to the Board which adversely affects their chances for parole;

(5) appointed counsel or appropriate counsel substitutes at the hearing when specific facts are in dispute or when counsel is needed to assist them in communicating; and

(6) a statement of reasons for the denial of parole that are substantially related to the criteria used by the Board in making parole determinations and an indication of the changes in attitudes, habits, etc. which will be required before parole will be granted.

Trial of these consolidated cases was held in Charlottesville, Virginia on March 21 and 22, 1975, and on the basis of the evidence there presented and the earlier Stipulations agreed upon by the parties, the court makes the following findings of fact and conclusions of law.

## Findings of Fact

On January 6, 1975 the defendants formally adopted standards and criteria governing parole decisions. Prior to this time, no formal standards and criteria existed. Following the adoption of these standards, the Board requested that copies be posted at each penal institution and be given to incoming inmates. The plaintiffs agree that the standards and criteria adopted on January 6, 1975 are constitutionally adequate. Defendants, however, deny that any such standards are constitutionally required although they concede

that they are useful and indicate that they have no intention of withdrawing those now in effect.[2]

Since January 1, 1975, as a matter of Board policy, all eligible inmates are personally interviewed by at least two members of the Board before a parole decision is made. These two members and at least one other member of the Board then make the parole decision. Prior to January 1, 1975, the Board on occasion would consider an inmate for parole without the benefit of a hearing. This was done when an inmate was not present at a particular institution on the day the Board held parole hearings at such institution. Three of the named plaintiffs were in the past considered for and denied parole without a hearing. Although as a matter of policy, the Board no longer denies inmates personal appearances, it challenges the plaintiffs' contention that such hearings are constitutionally required.

In the past and under present procedures inmates are not permitted access to their prison classification files which are used by the Board in making parole decisions. Two of the named plaintiffs—Vette and Wilson—sought and were denied access to their files in the past. It is generally understood by inmates that such files are not available to them. These files contain such things as presentence reports, psy-

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[2] Plaintiffs Franklin and Wilson were considered for and denied parole prior to the promulgation of standards by the Board and the defendants' action in promulgating the standards came after these suits were initiated. Although not raised by defendants, there is a question as to whether the issue of standards has been rendered moot by defendants' action. In view of the timing of the promulgation of the standards and the defendants' strong assertion that such standards are not constitutionally mandated the court is of the opinion that this issue is not moot. *See United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632 (1953); *United States* v. *Phosphate Export Assn., Inc.*, 393 U.S. 199 (1968); *cf. Richardson* v. *Ramirez*, 418 U.S. 24 (1974). The court similarly is of the opinion that the issue of hearings for inmates is not moot even though the Board now grants hearings in all cases.

chiatric and medical reports, disciplinary reports, reports from inmate counselors and parole officers, letters from an inmate's relatives, former employers, law-enforcement officers, judges, etc., and letters from the inmate to the Board or prison officials. Most of the information in the files could be revealed to the inmates without the risk of adverse effects; however, inmate access to certain information in the files would present serious problems. For example, some information in the files has been supplied by persons with the understanding that such information would remain confidential, and if that confidence were breached a danger of reprisal would exist. Also, psychiatric and psychological information in the files could easily be misunderstood by an inmate and thereby hinder his readjustment.

With respect to the psychological information, the evidence indicated that inmate files routinely contain the results of intelligence tests and a summary of a clinical interview conducted by a psychologist employed by the state. Some files also contain the results of "projective tests" which attempt to measure personality traits. An inmate's intelligence quotient is expressed in his file in terms of a numerical figure together with a characterization, *e.g.*, "superior," "bright normal," "borderline," "moderate retardation." Such characterizations and psychological evaluations, if not explained, could be misleading and detrimental to inmates. Although only one of the Board members has any formal psychological training, through experience the psychological information and intelligence characterizations and psychological evaluations can be fairly understood by them.

There exists at least two copies of an inmate's file. One is maintained by the Department of Corrections in Richmond and is used by the Board in making parole determina-

tions. A second file follows the inmate from institution to institution. In addition, a medical file is maintained on each inmate. The named plaintiffs have demonstrated that some of the information in their files is factually erroneous and that the Board does not undertake to verify the information contained therein in the absence of obvious error. Although the Board will read and consider information offered by inmates on their own behalf, it does not as a matter of course file such information.

To comply with the plaintiffs' claim that inmates should have access to their files prior to a parole hearing, the state would have to insure that the information filed in the Division of Correction's file in Richmond would also be contained in the file which follows the inmate. Since both files now apparently contain much of the same information, a minimal burden would be imposed in this regard. The administrative burden imposed in removing confidential or detrimental information from such files would be more substantial due to the difficulty in determining exactly what information should be removed and how to present such information to an inmate in a manner which would not be harmful to him and would not breach confidential sources. Another burden would be imposed by having to release the files to inmates for a reasonable period of time prior to their hearing in order that they could be reviewed. This burden would appear to be minimal because inmates are familiar with most of the information in their files and could review them in a few hours. Furthermore, since duplicate files exist it is unlikely that destruction or alteration of documents is a realistic threat.

The primary advantage of allowing prisoners access to their files would be that errors in files could be corrected and adverse information explained with the result that the

parole decision-making process would be improved. A second advantage would be that the inmates affected by adverse parole decisions would perhaps view the system as fairer and more accurate than at present, which in turn could aid in their adjustment.

In Virginia persons convicted of felonies are eligible for parole after serving one fourth of their sentence. VA. CODE ANN. § 53-251 (1974 Repl. Vol.). The Board is required to "review the case of each prisoner as he becomes eligible for parole and at least annually thereafter until he is released on parole or otherwise." VA. CODE ANN. §53-252 (1974 Repl. Vol.). The Board in some cases holds hearings for inmates more frequently than the annual hearings called for by statute. Under the present system of parole determination in Virginia the Board conducts interviews with elegible inmates at 19 institutions across the state. In the fiscal year 1973-74 the Board considered 3,792 inmates for parole and granted parole in 1,542 cases. Hearings in most cases were conducted by two of the five Board members. As a matter of Board policy these hearings are informal. The Board does not permit inmates to present family members, witnesses, advisors or lawyers at such hearings. The Board does, however, allow persons interested in an inmate's parole to appear by appointment before them in Richmond. Such hearings by interested parties are not frequently undertaken and the Board does not perceive such hearings to be very useful.

The Board's reason for not allowing family, witnesses, advisors or lawyers to appear at an inmate's parole hearings is that such persons would substantially increase the time consumed at such hearings without adding materially to the decision-making process. A second reason, and one which applies primarily to the Board's policy of not per-

mitting inmates to have lawyers, advisors or adverse witnesses present at the hearings, is that the presence of such persons would alter the present informal nature of the proceedings and make such hearings adversary in nature.

In the past and at present the Board supplies written reasons to inmates as to why parole has been denied. An inmate who is dissatisfied with the stated reasons can request a further explanation which the Board will endeavor to supply. Although the reasons given for the denial of parole are related to the criteria adopted by the Board, plaintiffs challenge them as being too *pro forma* and superficial. The reasons given to plaintiff Vette for his parole denial was that he had "been in trouble with the law since his 15th birthday" and his "release at this time would depreciate the seriousness of the offense committed and it is thus incompatible with the welfare of society." Plaintiff Wilson was denied parole because of his "long history of abuse of intoxicants" and he had "violated work release earlier this year." Plaintiff Franklin was denied parole because his "past record, which includes two felony sentences and a revocation of probation since 1968, is very much against favorable consideration for parole at this time" and his "need to show more consistency in [his] behavior adjustment." Plaintiff Jones was denied parole because he "[had] a criminal record dating back to 1964."

## Conclusions Of Law

In *Bradford* v. *Weinstein* and *Jenkins* v. *Tyler, supra,* the Court of Appeals concluded that:

> Since North Carolina and South Carolina have both adopted legislation affording even the prisoner serving the longest term upon conviction of even the most

> heinous crime the right to be considered eligible for release, usually upon one or more conditions, prior to service of the entire term imposed on him, we have no difficulty in concluding that the due process clause has *some* application to the proceedings in which it is determined whether the option shall be granted him. Slip opinion at 6-7. (emphasis in original).

Virginia has similarly extended an expectation of liberty in the form of parole eligibility to its prisoners,[3] and for this reason the Constitution requires that the procedures utilized by the state in determining whether such expectation will be realized must be fundamentally fair. The task before this court is that of striking a balance of minimal fundamental fairness in light of the interests of the plaintiffs in their statutorily-granted expectation of liberty and the interests of the state and society in the orderly adminisration of the parole system.

A.

The court has no hesitation in concluding that published standards and criteria governing parole determinations are constitutionally required. The interests of the inmates in this regard are obvious and compelling. Without such notice of the standards against which they will be judged for parole, inmates cannot rationally attempt to meet the requirements for parole and may be denied parole simply because they are unaware of what is required of them. In-

[3] Persons convicted of felonies in Virginia are eligible for parole after serving one fourth of their sentence or after serving twelve years of the sentence if one fourth of the sentence exceeds twelve years. Persons sentenced to life imprisonment are eligible for parole after serving fifteen years. VA. CODE ANN. § 53-251 (1974 Repl. Vol.)

mates also have an interest in knowing that their conditional liberty was not arbitrarily denied, yet without published standards the potential for and appearance of arbitrariness is magnified.

The state's interest does not appear to be contrary to that of the inmates in this regard. The purpose of parole was aptly stated by the Supreme Court in *Morrissey* v. *Brewer,* 408 U.S. 471 at 477 (1972):

> Rather than being an *ad hoc* exercise of clemency, parole is an established variation on imprisonment of convicted criminals. Its purpose is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term imposed.

This rehabilitative purpose behind parole is decimated when the persons sought to be rehabilitated are not apprised of the standards they must meet, and the defendants conceded at trial that such standards were valuable. Finally, the burden imposed upon the Board in promulgating and distributing standards and criteria is *de minimus* as is evidenced by the fact that constitutionally adequate standards were adopted by the Board in January of this year and are now given to inmates entering the Virginia penal system as a matter of course.

In view of the above considerations, the court concludes that as a matter of constitutionally required due process of law written standards and criteria governing the granting of parole must be adopted and made readily available to inmates of the Virginia penal system. The court further concludes that the standards and criteria adopted by the Board on January 6, 1975 and thereafter distributed to inmates satisfied this requirement. Since the defendants have stated

that they have no intention of rescinding these standards, injunctive relief is not necessary.

B.

A personal hearing has come to be recognized in various contexts as a constitutional requisite of due process when an individual's interest in liberty or property is at stake. *See e.g., Goss* v. *Lopez,* 419 U.S. 565 (1975) (suspension of public school students); *Wolff* v. *McDonnell,* 418 U.S. 539 (1974) (prisoner disciplinary proceedings); *Morrissey* v. *Brewer,* 408 U.S. 471 (1972) (parole revocation proceedings); *Bell* v. *Burson,* 402 U.S. 535 (1971) (suspension of driver's license). A personal confrontation protects an individual from suffering a "grievous loss" by minimizing the risk that public officials will reach a decision based upon unexplained or mistaken facts. In *Bradford* v. *Weinstein, supra,* the Court of Appeals commented in this regard:

> We think it would be a grievous loss for a prisoner by reason of a completely ex parte proceeding, and the increased opportunity for committing error, to be denied parole and required to serve more of his term because the attention of the parole board was not called to data tending to indicate that parole should be granted. . . . Slip opinion at 11.

A personal hearing is also beneficial to the Board and society insofar as the reliability of parole decision-making is enhanced by such hearings. The Board itself apparently recognizes the value of such hearings since personal interviews have been a part of the Board's procedure for some time and as of January, 1975 the Board has deferred parole decisions in all cases until after an interview has been held.

Although the burden in conducting such interviews is substantial, it is apparently manageable. Accordingly, the court concludes that as a matter of constitutional due process of law hearings are required. Since the present procedures for conducting parole hearings satisfy this requirement no prospective injunctive relief is necessary.[4]

C.

As a matter of procedural due process of law, the court concludes that inmates should be afforded access to the information upon which the Board relies in reaching its decision whether to grant or deny parole. Since duplicate files which accompany the inmates are presently maintained, the administrative burden in requiring duplicate filings and affording inmates a reasonable period prior to their hearing in which to review their files is not great. Nor is the potential for alteration or destruction of the duplicate files a substantial danger. On the other hand, the burden on the prison system in establishing and maintaining a procedure for removing or altering confidential or potentially harmful information is substantial. Although most of the information in the files is harmless, certain information would have to be removed and possibly some reports would have to be rewritten so to protect the author's identity.

Against this burden must be weighed the basic notion of fundamental fairness which would allow an individual an opportunity to attempt to refute or explain adverse or

[4] Although plaintiffs have not specifically requested declaratory relief, in addition to injunctive relief they have asked for "such other additional or alternative relief as appears to the court to be equitable and just under the circumstances." With respect to the issues of "standards and criteria" and "hearings," the court is of the opinion that in light of the present circumstances a declaratory judgment pursuant to 28 U.S.C. § 2201 is appropriate.

erroneous information which might result in parole denial. It is clear from the evidence presented in this case that erroneous and outdated information exists in inmate files and that without inmate access to the files it is unlikely that the Board will be made aware of it. It is also obvious that in some instances adverse information can be explained away. By affording inmates an opportunity to do this, parole determinations would be fairer and more reliable in both appearance and substance.

Although the question of prisoner access to their files is not free from doubt, on balance the court is of the opinion that the interests of the individual inmates in seeing their files outweigh the burden on the state in affording such access and removing potentially dangerous information therefrom. *Accord, Cooley* v. *Sigler,* 381 F.Supp. 441 (D. Minn. 1974); *Childs* v. *United States Board of Parole,* 371 F.Supp. 1246 (D. D.C. 1973), modified, 511 F.2d 1270 (D.C. Cir. 1974); *Contra, Wiley* v. *United States Board of Parole,* 380 F.Supp. 1194 (M.D. Pa. 1974); *Barradale* v. *United States Board of Paroles and Pardons,* 362 F.Supp. 338 (M.D. Pa. 1973). Accordingly, the court concludes that the Board must afford inmates access to the information in their files for a reasonable period prior to their parole hearings. Such access may of course be denied with respect to information which would threaten prison security or present a substantial likelihood of harm to the inmate or others.

D.

The court is of the opinion that at their parole hearing inmates do not have a constitutional right to call witnesses in their own behalf or to call and cross-examine persons who have supplied adverse information to the Board. To permit inmates to call witnesses at their hearing, whether

favorable or adverse, would add substantially to the time and expense of such hearings and possibly inhibit persons from contributing information because of the potential that they might later be called as witnesses. By virtue of the volume of hearings conducted and the limits of its resources, a great deal of discretion must be afforded to the Board in structuring hearings. As noted above, the Board does permit witnesses to appear before it in Richmond by appointment and does accept documentary evidence offered by inmates.

The interests of the inmates in calling and confronting witnesses at their hearing does not, in the court's opinion, outweigh the Board's interest in conducting hearings in the present, informal and non-adversarial manner. A parole hearing differing significantly from the usual situation such as a parole revocation hearing in which the right to call and confront witnesses is guaranteed. See *Morrissey* v. *Brewer,* 408 U.S. 471 (1972). In the first place the relationship between an inmate and the Board is such that the need for witnesses is diminished. This relationship was described in *Heyser* v. *Reed,* 318 F.2d 225 (D.C. Cir. 1963), *cert. den. sub. nom. Thompson* v. *United States Board of Parole,* 357 U.S. 957 (1963):

> The Bureau of Prisons and the Parole Board operate on the basic premise that prisoners placed in their custody are to be rehabilitated and returned to useful lives as soon as in the Board's judgment that transition can be safely made. . . . Thus there is a genuine identity of interest if not purpose in the prisoner's desire to be released and the Board's policy to grant release as soon as possible. Here there is not the adverse, conflicting objectives as between the parolee and the Board inherent between prosecution and defense in a criminal case. 318 F.2d at 237.

Secondly, the right to confront and call witnesses serves an obviously important function when historical facts are in dispute; however, a parole hearing is primarily concerned with predicting future behavior, as opposed to a retrospective determination of a past occurrence and for this reason the individual's needs in this regard are generally not as great. *See Wiley* v. *United States Board of Parole,* 380 F.Supp. 1194, 1200 (M.D. Pa. 1974). Accordingly, in light of the nature of parole hearings and the institutional needs of the Board in conducting numerous hearings with its limited resources, the court concludes that the present policy of excluding witnesses from parole hearings is not inconsistent with procedural due process guarantees of the Constitution. *See Wolff* v. *McDonnell,* 418 U.S. 539, 566-567 (1974).

E.

Plaintiffs urge that the appointment of counsel should be required for inmates in the same circumstances as were specified in *Gagnon* v. *Scarpelli,* 411 U.S. 778 at 790 (1973) for probationers or parolees facing revocation of their status:

> [C]ounsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely or colorable claim (i) that he has not committed the alleged violation of the conditions of which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation or make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.

Such a rule would require a case by case determination and add to the administrative burden and expense of the Board. It would also alter the non-adversarial nature of parole hearings by engendering disputes between inmates and the Board over the need for counsel or counsel substitute. And it seems clear that if advocates were appointed, the present informal, predictive nature of parole proceedings would be altered.[5] What was said in *Wolff* v. *McDonnell*, 418 U.S. 539 at 570 (1974) with respect to prison disciplinary proceedings applies with even greater force to parole hearings:

> The insertion of counsel into the disciplinary process would inevitably give the proceedings a more adversary cast and tend to reduce their utility as a means to further correctional goals. There would also be delay and very practical problems in providing counsel in sufficient numbers at the time and place where hearings are to be held.

As noted, the interests of the Board and inmates regarding parole are not inherently adverse, and although in some cases the appointment of counsel could aid both the inmate and the Board, the court does not believe that as a matter

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[5] In *Wiley* v. *United States Board of Parole*, 380 F. Supp. 1194 at 1200 (M.D. Pa. 1974) the court aptly contrasted parole hearings and parole revocation proceedings:

> [T]he parole release decision, . . . is a prognostic determination with respect to one's suitability for parole and is based on a complex of tangible and intangible factors and involves the discretionary application of knowledge derived from such fields as psychology, criminology, sociology, and penology. While the parole revocation procedure basically is concerned with making a factual determination with respect to parole violation, parole decision-making centers on making a diagnostic and predictive determination with respect to whether the rehibilitation of the prisoner and the welfare of society generally would be best served by granting the inmate's conditional freedom rather than by his physical confinement.

of constitutional due process any such rule is required in this regard.

F.

Finally, the court concludes that a statement of reasons for parole denial should be given to inmates. Such reasons should be as clear and precise as possible, however, as a constitutional proposition such reasons need only be substantially related to the criteria adopted by the Board which have been found to be constitutionally requisite. For the most part the reasons given to the named plaintiffs satisfy this requirement. The Board requires a large degree of discretion in exercising its judgment, and the court does not believe that a detailed narrative justifying the denial of parole is constitutionally required. The present procedure of supplying general reasons which are substantially related to the parole decision criteria and providing further explanation on request is constitutionally sufficient.

Accordingly, with respect to the plaintiffs' claims for injunctive relief, it is Ordered that:

(1) Within a reasonable period following the issuance of this decision, the Parole Board establish procedures for affording inmates who are eligible for parole an opportunity prior to their parole hearing in which to review the information to be considered by the Board in reaching a parole decision. Such procedures may limit access by inmates to information which would reveal confidential sources or information which state officials reasonably consider as posing a danger to the eligible inmate or others.

(2) In other respects the court finds that the present procedures of the Parole Board are constitutionally

adequate and therefore plaintiffs' other claims for injunctive relief are denied.

(3) Pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 it is the judgment of the court that the Fourteenth Amendment to the Constitution requires that standards and criteria governing the Board's parole decisions be maintained and made reasonably available to the members of the plaintiff class and that the individual members of the plaintiff class are entitled to a personal hearing before members of the Board prior to a parole determination in their individual cases.

(4) Within a reasonable period of time after receipt of this opinion, defendants grant to the four named plaintiffs a new parole hearing which is consistent with the conclusions expressed herein.

Damages

The court finds as a fact that in denying the named plaintiffs parole the Board acted in good faith in accordance with their usual practice and statutory authority. Defendants were therefore performing a quasi-judicial function and as a matter of law are immune from suits for damages under 42 U.S.C. § 1983. *Brown* v. *Boxley,* No. 75-1186 (4th Cir. April 2, 1975); *Christmas* v. *Boxley,* No. 74-2351 (4th Cir. July 7, 1975). Accordingly, plaintiffs' claims for damages are denied, and it is so Ordered.